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LATHAM & WATKINS

ATTORNEYS AT LAW
1001 PENNSYLVANIA AVE., N.W., SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
FAX (202) 637-2201

PAUL R. WATKINS (1899-1973)
DANA LATHAM (1898-1974)

CHICAGO OFFICE
SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
FAX (312) 993-9767

LONDON OFFICE
ONE ANGEL COURT
LONDON EC2R 7HJ ENGLAND
TELEPHONE 071-374 4444
FAX 071-374 4460

LOS ANGELES OFFICE
633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
TELEPHONE (213) 485-1234
FAX (213) 891-8763

MOSCOW OFFICE
ULITSA DOVZHENKO 1
MOSCOW 119590 RUSSIA
TELEPHONE 011 7-095 147 9518
FAX 011 7-095 147 6252

NEW YORK OFFICE
885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
FAX (212) 751-4864

ORANGE COUNTY OFFICE
650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CALIFORNIA 92626-1925
TELEPHONE (714) 540-1235
FAX (714) 755-8290

SAN DIEGO OFFICE
701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
FAX (619) 696-7419

SAN FRANCISCO OFFICE
505 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111-2586
TELEPHONE (415) 391-0600
FAX (415) 395-8095

July 14, 1993

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JUL 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Opposition of DirecTv, Inc.; MM Docket No. ~~92-65~~ 92-265

Dear Ms. Searcy:

Enclosed on behalf of DirecTv, Inc. are an original and four copies of DirecTv's Opposition of DirecTv, Inc., to Petitions for Reconsideration.

Please call me if you have any questions concerning these comments.

Very truly yours,

Gary M. Epstein
James H. Barker
of LATHAM & WATKINS

Enclosures

cc: Chairman James H. Quello
Commissioner Andrew C. Barrett
Commissioner Ervin S. Duggan

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUL 14 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 25	)	
of the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	MM Docket No. ~~93-25~~ 92-265
	)	
Direct Broadcast Satellite	)	
Public Service Obligations	)	
	)	
	)	

OPPOSITION OF DIRECTV, INC., TO PETITIONS FOR RECONSIDERATION

Gary M. Epstein
James H. Barker
LATHAM & WATKINS
Suite 1300
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 637-2200

July 14, 1993

EXECUTIVE SUMMARY

DirecTv was an active participant in both the Comment and Reply phases of this proceeding, and believes that the Commission has faithfully followed the intent of Congress in promulgating its program access rules. The Commission's new program access regime finally ensures that multichannel video programming distributors ("MVPDs") can gain access to vital programming at reasonable and non-discriminatory rates, terms and conditions. The Commission's rules enable MVPDs to compete with the cable industry as Congress envisioned. Indeed, as a direct consequence of the enactment of the 1992 Cable Act and its implementation by the FCC, DirecTv has been able to sign its initial cable programming agreements, and can thus continue to build a true nationwide alternative to cable television as envisioned by Congress.

The Commission has received various petitions for clarification or reconsideration of its program access rules, some of which constitute obvious "last-ditch" efforts by cable interests to recycle the same arguments that they have continually advanced -- and lost -- before Congress and the Commission. In commenting on specific petitions, DirecTv urges the Commission generally to refute such attempts to undercut the statutory protections granted to alternative MVPDs, and to reaffirm its program access rules. The Commission must not allow cable interests to dilute the fair and effective measures that will truly open up the video delivery industry to vibrant and real competition.

TABLE OF CONTENTS

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JUL 14 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-265
Development of Competition and Diversity in Video Programming Distribution and Carriage	)	

OPPOSITION OF DIRECTv, INC., TO PETITIONS FOR RECONSIDERATION

DirecTv, Inc. ("DirecTv") hereby opposes certain of the Petitions for Reconsideration and/or Clarification of the Commission's rules concerning implementation of the provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (the "1992 Cable Act") with respect to access to cable programming (Section 19).[1/]

I. INTRODUCTION

DirecTv[2/] was an active participant in both the Comment and Reply phases of this proceeding, and believes that the Commission has faithfully followed the intent of Congress in promulgating its program access rules. The Commission's new regulations will go far in enabling multichannel video programming distributors ("MVPDs") other than cable television-owned entities

1/ In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, First Report and Order, MM Docket No. 92-265 (released April 30, 1993) ("Program Access Order").

2/ DirecTv and Hughes Communications Galaxy, Inc. ("HCG") are sister subsidiaries of Hughes Communications, Inc. ("HCI"). HCG is a Commission licensee in both the fixed satellite service and the direct broadcast satellite ("DBS") service. DirecTv is the DBS operating, customer service and programming acquisition arm of the HCI family.

finally to gain access to vital programming at reasonable and non-discriminatory rates, terms and conditions, and will introduce much-needed competition into video distribution markets heretofore dominated by cable monopolists. Indeed, as a direct consequence of the enactment of the 1992 Cable Act and its implementation by the FCC, DirecTv has been able to sign its initial cable programming agreements, and can continue to build a true national alternative to cable television as envisioned by Congress.

The Commission has received various petitions for clarification or reconsideration of its program access rules, some of which constitute obvious "last-ditch" efforts by cable interests to recycle the same arguments that they have continually advanced -- and lost -- before Congress and the Commission. DirecTv urges the Commission to rebuff these attempts to undercut the statutory protections granted to alternative MVPDs, and to reaffirm its program access rules. DirecTv presents its comments on aspects of specific petitions in more detail below.

II. DISCUSSION

A. Liberty Media Corporation ("Liberty Media")

Liberty Media's Petition for Reconsideration re-advances its argument, expressly rejected by the Commission, that complainants alleging violations of the specific prohibitions against discrimination, exclusive contracts or undue influence set forth in Section 628(c) of the statute must make a threshold showing that they have suffered harm as a result of the prescribed conduct.[3/] Liberty also argues that the 5% attribution standard adopted by the Commission is "overinclusive and arbitrary."[4/]

3/ See Liberty Media Corporation, Petition for Reconsideration (June 10, 1993), at 3-8; Reply Comments of Liberty Media Corporation (February 16, 1993), at 4-8, 36-39.

4/ See id. at 8-12. In addition, Liberty Media argues that, in order to facilitate the exchange of information to promote pre-complaint resolution of disputes, the Commission should extend confidentiality protections for proprietary information to information and contracts provided by a programming vendor during the pre-complaint notice and negotiation period, see id. at

After thoroughly considering the interrelationship between Section 628(b)'s broad prohibition against "unfair methods of competition or unfair or deceptive acts or practices" and the more specific prohibitions set forth in Section 628(c), the Commission concluded:

> [T]he language in subsection (b) was not intended to impose an additional burden or threshold showing on complainants with respect to the activities specified in subsection (c). Rather, we believe that if behavior meets the definitions of the activities proscribed in subsection (c), such practices are implicitly harmful.[5]

The Commission's interpretation of Section 628(c) is straightforward and correct. Section 628(c) identifies certain specific types of anticompetitive behavior that have been legislatively found by Congress to cause competitive harm, and that therefore require no additional threshold showing of "harm" by an MVPD complainant. The requirement that a practice or act be specifically shown to hinder competitors applies only to activities or practices not specified in Section 628(c).[6]

Contrary to Liberty Media's assertions, Section 628(d) in no way contradicts the Commission's interpretation of the statute. Section 628(d) reads in full:

> (d) Adjudicatory Proceeding.--Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection

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13-14, and urges the FCC to revise its rules to require that buying groups provide meaningful financial commitments to support their programming purchases. See id. at 14-15.

5/ Program Access Order at 19, ¶ 47 (footnote omitted); see id. at 5, ¶ 12 ("We will not require complainants alleging violations of the specific prohibitions in Section 628(c) -- regarding discrimination, exclusive contracts, or undue influence -- to make a threshold showing that they have suffered harm as a result of the proscribed conduct. In this regard, we are persuaded that Congress has already determined that such violations result in harm.").

6/ The Commission has correctly concluded that "Section 628(b) is a clear repository of Commission jurisdiction to adopt additional rules or to take additional actions to accomplish the statutory objectives." Program Access Order at 15-16, ¶ 41. Section 628(b) thus encompasses refusals to deal and exclusionary conduct beyond the specific prohibitions set forth in Section 628(c). Even if a practice is not specifically proscribed under Section 628(c), a complaint will nevertheless state a prima facie case under section 628 if it alleges that a cable operator or vertically integrated programmer is engaged in a practice that 1) is unfair or deceptive and 2) the purpose or effect of which was to hinder significantly in some fashion the aggrieved MVPD's ability to distribute programming to customers. See id. at 16, ¶ 41.

> (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

Because the provision speaks in terms of "aggrieved" MVPDs alleging violations under Sections 628(b) or (c), Liberty Media argues that a uniform standing requirement of "injury-in-fact" has been imposed for alleged violations of either of these two subsections. But this strained reading is simply incorrect. Section 628(d) in no way speaks to whether and under what circumstances complainants will be required to make an objective showing of such injury. Section 628(c) enumerates certain categories of conduct which, if proved by an MVPD, will constitute per se violations of the statute. The Commission's interpretation of Section 628(c) does not mean that an MVPD alleging such a per se violation is not "aggrieved" or has not been "injured in fact"; the statute presumes such injury has occurred if the defendant is proven to have engaged in certain specified anticompetitive practices.[7/] Section 628(d), in other words, simply does not speak to whether or when a threshold demonstration of "harm" is required under 628(c).

The Commission should affirm its conclusion that 628(c) does not require a threshold showing of injury. As the Commission has observed, this reading accords with the plain language of the statute, and with congressional intent.[8/] Throughout this proceeding, Liberty Media has been at the forefront of the cable industry's attempts to rewrite the plain language of Section 628 in order to throw up as many substantive and procedural obstacles as possible to impede alternative video providers from invoking the protections of Section 628. The Commission has rejected these attempts to preserve cable's monopoly power, and should reject this one as well.

7/ There are many reasons to require an adjudicative proceeding in such per se cases, including the fashioning of an appropriate remedy for violation of the statute.

8/ See Program Access Order at 19, ¶ 47 (observing that "the legislative history indicates that Congress did not intend to place a threshold burden on aggrieved MVPDs to show specific or generalized harm to competition in those circumstances specifically prescribed in Section 628(c)").

Similarly, the Commission should reject Liberty Media's request that the Commission revise its attribution standard for assessing vertical integration. The Commission found that the intent of its video dialtone proceeding was analogous to the intent of Congress in adopting Section 628, i.e., to curb incentives for influencing behavior of affiliates to the detriment of competitors.[9/] The Commission therefore adopted a video dialtone-like attribution threshold -- considering a cable operator to have an "attributable interest" in a programmer if it holds more than five percent of the programmer's outstanding voting or non-voting stock -- out of concern that "a standard of more than five percent could allow cable operators to exert significant influence over their affiliated programmers without being subject to the statute."[10/]

Liberty Media responds, however, that the Commission's attribution standard is "overinclusive and arbitrary," and instead should only reach

> those situations in which Congress has perceived a potential problem in the marketplace, i.e. where cable operators have both the incentive and the ability to compel discriminatory behavior by an affiliated programmer. At a minimum, the Commission should incorporate the single majority shareholder, limited partner, and non-voting shareholder exceptions recognized under the broadcast attribution standards.[11/]

Liberty Media's argument ignores the core concerns of the Cable Act. As the Commission has observed, Congress was obviously concerned "with industry-wide influences that can occur even in the absence of a vertical relationship in the complainant's specific market," and has adopted a strict attribution standard for assessing vertical integration in order to ensure "that all entities with potential incentives to engage in anticompetitive conduct are covered by our rules."[12/]

9/ Program Access Order at 12, ¶ 32.

10/ Id.

11/ Liberty Media Petition for Reconsideration at 12 (emphasis in original).

12/ Program Access Order at 5, ¶ 11.

Notwithstanding Liberty Media's efforts to create loopholes by importing exceptions into the standard from the broadcast attribution rules, the Cable Act's focus on anticompetitive incentives fully supports the Commission's imposition of a stricter standard. As DirecTv pointed out in its initial Comments,[13/] the Commission basically does not consider an interest "attributable" in the broadcast context unless it is a present voting equity interest of at least five percent (or, in the case of a partnership, a non-insulated limited partnership interest or a general partnership interest), or a managerial position. The rationale for the Commission's broadcast rules is the Commission's interest in the control of broadcast stations, based on its goal of ensuring a wide diversity of broadcast "voices".[14/] This is in contrast to the concerns raised under the Cable Act about the incentives that cable operators have to thwart competition by exercising undue influence over their suppliers, the programming vendors. For example, non-voting or minority stockholders may have significant influence over a programmer's contract decisions even if they do not have the ability to "control" the programmer in the sense of voting on the day-to-day business decisions of the company, particularly if they are also distributors of the programmer's product.

For this reason, the Commission is justified in looking beyond the indicia of control adopted in the broadcast area when defining "attributable interest" in the cable area. The Commission's proposed attribution standard should be affirmed as an appropriate threshold for

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13/ See Comments of DirecTv at 12-14.

14/ See Attribution of Ownership Interests in Broadcasting, Cable Television and Newspaper Entities, 97 FCC 2d 997, 1004 (1984) ("The underlying multiple ownership rules are premised on the principle that 'a democratic society cannot function without the clash of divergent views.'"), reconsidered in part, 58 Rad. Reg. 2d [P&F] 604 (1985), on further reconsideration, 1 FCC Rcd. 802 (1986).

identifying in this context the point at which cable ownership may create the potential for influence or control in contravention of the purposes of the Act.[15/]

B. Time Warner Entertainment Company, L.P. ("Time Warner")

The Commission correctly decided to apply its program access rules prospectively to all existing contracts, whether they were executed before or after the effective date of the rules.[16/] Time Warner urges the Commission now to decide upon reconsideration that its discrimination rules do not apply to existing contracts.[17/] Time Warner's proposal would create a huge "loophole" in the Commission's rules and thereby perpetuate cable's monopoly stranglehold on multichannel subscription programming for the indefinite future.

Specifically, the scenario Time Warner finds problematic is as follows:

> If, before the effective date of the rules, a programming vendor entered into a contract with distributor A at a low price, and with competing distributor B at a higher price, the Order would seem to permit distributor B now to abandon its contract and demand a lower price, but does not appear to give the programming vendor the right now to abandon its contract with distributor A. Because this is fundamentally unfair, the Commission, upon reconsideration, should rule that its discrimination rules do not apply to existing contracts.

The rule is "fundamentally unfair," Time Warner contends, because had the programming vendor known that "it might at some future time be forced to offer the same lower price term to all competitors of distributor A," it "might never have offered the low price to distributor A."[18/]

15/ In addition, DirecTv urges the Commission not to adopt the more "flexible" attribution standard for minority-owned cable programmers suggested by Black Entertainment Television, Inc. ("BET"). See BET, Petition for Reconsideration (June 10, 1993). DirecTv believes that this programming is extremely valuable and should be made available, as Congress mandated in Section 25, to alternative MPVDs. This availability will also ensure that programming like BET's will have the widest possible viewership.

16/ Program Access Order at 57, ¶ 120.

17/ Petition of Time Warner Entertainment Company, L.P., for Reconsideration (June 10, 19930 at ii, 5-6.

18/ Time Warner Petition for Reconsideration at 6.

This argument is nonsense, and was considered and expressly rejected by the Commission.[19] Time Warner and other cable MSOs have for years been on notice of the continuous complaints and investigations of the cable industry's anticompetitive behavior, and particularly its discriminatory treatment of alternative MVPD distributors.[20] Having persisted in the discriminatory practices that finally required the passage of legislation to address them, there is no room for Time Warner to now complain simply because it must honor the remaining terms of agreements that it made with those alternative distributors with whom it did deal.

Time Warner also claims that a showing of vertical integration in the specific geographical area at issue should be an element of a claim under 628(c). This argument is another rehashing of Time Warner's position that applicability of Section 628's prohibitions should be limited to local markets where an entity is in fact vertically integrated, i.e., where it holds an attributable interest in the local cable system.[21] The Commission should once again reject it.

Section 628 does not limit its prohibition against anticompetitive behavior to practices in markets where cable operators have cable systems, or to markets where vertically integrated programmers have affiliated cable systems. Moreover, as the Commission stated in fully considering and expressly rejecting Time Warner's argument, Congress drafted the statute in this manner for a reason:

> Although some parties claim that programming vendors would not have the incentive to engage in the prohibited practices where they are not vertically integrated, we

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19/ See Reply Comments of Time Warner at 16-17.

20/ See, e.g., Cable Report, 5 FCC Rcd 4692, 5021 (finding that cable programmers "have imposed discriminatory terms and conditions in their programming licenses that have seriously handicapped the alternative media's ability to compete effectively against incumbent cable

> believe that the legislative history demonstrates Congress' concern that vertically integrated vendors may control programming access in areas without a commonly owned distributor.[22]

The Commission should affirm this conclusion.

Time Warner dismisses as a "meaningless truism that 'vertically integrated vendors may control programming access in areas without a commonly owned distributor,' because all programming vendors 'control access' to their services everywhere."[23] The statement that vertically integrated programming vendors control access to programming in areas without a commonly owned distributor is certainly a "truism," but it is hardly "meaningless"; indeed, it is precisely the reason why the scope of the Commission's rules should not be limited to situations where a satellite cable programming vendor is vertically integrated with a distributor within a particular market.

Congress passed Section 628 in large part because it was concerned with the overall level of vertical integration between cable operators and video programming suppliers. One of Congress's concerns was that vertically integrated programmers, who control most of the desirable programming services, possess industry-wide incentives to discriminate against emerging alternative MVPDs and to favor cable providers uniformly as a distribution technology.[24] Such incentives potentially can exist independently of whether a vertically integrated programmer as a general matter is not integrated with a cable operator in a particular geographic market. Indeed, the Commission's 1990 Cable Report noted, for example, that "some [vertically integrated] programming services refuse

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22/ Program Access Order at 12, ¶ 30 (citing 138 Cong. Rec. H6533-34 (daily ed. July 23, 1992) (remarks of Rep. Tauzin).

23/ Time Warner Petition for Reconsideration at 8, n.2.

24/ Thus, Representative Tauzin warned: "It will do us little good to hope in vain for the advent of a DBS, direct broadcast satellite, industry or for the expansion of wireless cable in America as competition to this monopoly if none of it can get programming. Programming is the key." 138 Cong. Rec. at H6533 (daily ed. July 23, 1992) (remarks of Rep. Tauzin).

to make their programming available to wireless cable providers, even in areas unserved by cable."[25] Such evidence supports the Commission's conclusion that vertically integrated vendors may control programming access in areas without a commonly owned distributor.

Furthermore, the Commission's decision requiring complainants to show vertical integration only as a general matter makes good policy sense, especially in addressing MVPDs such as DBS with national geographical service areas. DirecTv, for example, will offer many programming services to households across the country, and it therefore seeks national program carriage rights. National distribution will enable DirecTv to achieve economies of scale comparable to those enjoyed by the national MSOs and the broadcast networks. Because of DBS service's national scope, if DirecTv is unable to obtain programming from a particular vendor, the provisions of Section 628 logically should apply to that vendor if it has an affiliated cable system anywhere in the United States. Otherwise, by denying DirecTv access to programming in a particular part of the country, the vertically integrated programmer can weaken DirecTv's ability to compete, not only in that market, but also on a nationwide basis because DirecTv's economies of scale will be diminished. In addition, as an inherently nationwide service, the inability of DirecTv to obtain access to programming in varying parts of the country would cause operational difficulties and consumer confusion as to the services available from DirecTv.

If the price charged to DirecTv by a programming vendor is higher than the price charged by the vendor to an affiliated cable system anywhere in the United States, it is properly actionable under Section 628(c)(2)(B) of the statute. The Commission's rules on this point should be affirmed.

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[25] 1990 Cable Report, 5 FCC Rcd at 5021 (emphasis supplied).

C. **Viacom International, Inc. ("Viacom")**

Viacom is yet another MSO whose Petition for Reconsideration and Clarification seeks to advance positions that the Commission has considered and appropriately rejected. Viacom first asks the FCC to adopt what Viacom characterizes as a

a de minimis exemption to the program access rules for any program service whose common ownership with cable systems accounts for fewer than 5% of the total subscribers to that service.[26/]

In making this argument, Viacom submits an economic study to "demonstrate" that there are no incentives to discriminate against alternative technologies when the percentage of subscribership to commonly-owned cable systems is "relatively insignificant."[27/] On this point, Viacom also urges that its "behavior in serving alternative technologies supports the proposed exemption."[28/]

Once again, Viacom's proposal is an attempt to create an unwarranted and potentially significant loophole in order to avoid its program access obligations. Like Time Warner's proposal to impose upon program access complainants the burden of demonstrating "vertical integration" in specific geographic markets, Viacom also seeks to shift the Commission's focus away from the "industry-wide influences" that can attend vertical integration, even in the total absence of a vertical relationship with a cable operator in a specific market, or in situations such as Viacom proposes where common ownership of cable systems accounts for less than 5% of the subscribers to a particular program service.

Viacom has attempted to characterize its own behavior in dealing with MVPD cable competitors as supporting the de minimis exemption it seeks. In the high-power DBS area, for

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26/ Viacom International, Inc., Petition for Reconsideration and Clarification (June 10, 1993), at 2-8.

27/ Id. at 2-7.

28/ Id. at 7-8.

example, Viacom has said that it was one of the "first to license" its program service to one DBS operator.[29] Viacom does not mention that it has not yet made its programming available to DirecTv, which will likely represent at least 50% of the high-power DBS industry for the rest of the decade. Regardless of whether Viacom's conduct constitutes a violation of the Commission's rules on non-price discrimination,[30] it in any event undercuts dramatically Viacom's position.

Viacom also asks the Commission to clarify that a complainant has a higher burden of proof if the difference in price charged to a "similarly situated" distributor is more than the greater of 5 cents or 5 percent. Viacom's intent or rationale in suggesting this clarification is unclear, but in considering this proposal, the Commission should be wary of taking any action that undercuts the touchstone of allowing alternative MVPDs fair access to programming at rates that are competitive to those offered to cable providers. To the extent that Viacom's proposal is contrary to this fundamental objective of the 1992 Cable Act, it must be rejected by the Commission.[31]

D. **Discovery Communications, Inc. ("Discovery")**

Discovery's Petition for Clarification and Reconsideration asks the Commission to exemption, however, are not explained. Discovery points to the general desire expressed by Congress and the Commission to promote the availability of educational or informational programming,[33] urges that the creation of such an exemption "would not be likely to have any effect on the general availability of satellite programming services to 'alternative' distribution technologies,"[34] and then summarily concludes that "the Commission should exempt from its program access rules any programming service that supplies programming of an educational or informational nature."[35] Directv respectfully disagrees with Discovery and believes that the creation of such an exemption would in fact have quite undesirable ramifications for alternative MVPDs.

For example, Discovery does not discuss Section 25 of the Cable Act, which embodies congressional efforts to promote the availability of educational or informational programming. Section 25 specifically requires a DBS provider to make 4-7% of its channel capacity available for "noncommercial programming of an educational or informational nature."[36] DirecTv believes that the noncommercial programming provided by networks like Discovery or The Learning Channel should count towards meeting the obligation. Thus, the demands for and importance of obtaining nondiscriminatory access to such programming are actually heightened dramatically for DBS providers seeking additional sources of quality noncommercial educational or informational programming. An exemption that would allow such sources to enter into exclusive arrangements or

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33/ Id. at 2-3.

34/ Id. at 3-4.

35/ Id. at 4.

36/ Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act, Direct Broadcast Satellite Public Service Obligations, Notice of Proposed Rulemaking, MM Docket No. 93-25 (released March 2, 1993) ("93-25 Notice"). Both DirecTv and Discovery have filed initial comments in that proceeding, and Directv today is filing its Reply Comments in that docket.

to charge highly discriminatory rates among different MVPDs does not promote either availability of or access to such programming. In short, Discovery's proposal should not be adopted.

Other aspects of Discovery's petition are also problematic. With respect to confidentiality protections, Discovery asks the Commission to take further steps to ensure that complainants are not able to use the complaint process to gain access to confidential information. Specifically, Discovery suggests that, upon proper justification, a programmer should be able to restrict access to certain proprietary information only to the complainant's attorneys and Commission "the Commission determined that the interest of distributors outweighed those of the programmers."[38] In fact, the Commission has stated quite clearly that "the long term nature of many programming agreements would delay for several years the uniform implementation of rules intended to prohibit discriminatory practices within the video programming distribution industry."[39] Alternative MVPDs have been subject to unfair and discriminatory treatment, and the Commission should proceed to ensure that existing contracts violative of its rules are brought into compliance.

III. CONCLUSION

The Commission's new program access regime finally provides alternative MVPDs with a means of gaining fair access to the programming they need in order to begin in earnest to compete with the cable industry. The Commission must not allow these cable interests to dilute the fair and effective measures that will truly open up the video delivery industry to vibrant and real competition. The Commission should re-affirm its program access rules.

Respectfully submitted,

DirecTv, INC.

By: ______________________

Gary M. Epstein
James H. Barker

LATHAM & WATKINS
Suite 1300
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 637-2200

Its Attorneys

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[38] Discovery Petition for Clarification or Reconsideration at 8.

[39] Program Access Order at 57, ¶ 121 (footnote omitted).

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 1993, I caused a copy of the foregoing to be served by United States mail, postage prepaid, on the following:

Kenneth E. Hall
General Manager
WJB-TV Ft. Pierce Limited Partnership
8423 US #1
Port St. Lucie, FL 34985

Robert L. Hoegle, Esq.
Carter, Ledyard & Milburn
1350 I Street, N.W.
Suite 870
Washington, D.C. 20005
Attorney for Liberty Media Corporation

David Honig, Esq.
1800 N.W. 187th Street
Miami, FL 33056
Counsel for Caribbean Satellite Network, Inc.

Robert D. Joffe, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019

Judith A. McHale, Esq.
Senior Vice President & General Counsel
Discovery Communications, Inc.
7700 Wisconsin Avenue
Bethesda, MD 20814

John B. Richards, Esq.
Keller and Heckman
1001 G Street, N.W.
Washington, D.C. 20001
Attorney for National Rural Telecommunications Cooperative

Lawrence W. Secrest III, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Attorney for Viacom International, Inc.

David. M. Silverman, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
Attorney for Black Entertainment Television

Paul J. Sinderbrand, Esq.
Sinderbrand & Alexander
888 Sixteenth Street, N.W.
Suite 610
Washington, D.C. 20006-4103
Attorney for the Wireless Cable Association
International, Inc.

James H. Barker